BEFORE THE

PUBLIC SERVICE COMMISSION of

SOUTH CAROLINA

DOCKET NO. 2005-67-C

In Re: Petition of MCImetro Access Transmission	)
Services, LLC for Arbitration of Certain Terms	)
and Conditions of Proposed Agreement with	)
Farmers Telephone Cooperative, Inc., Home	)
Telephone Co., Inc., PBT Telecom, Inc., and	)
Hargray Telephone Company, Concerning	)
Interconnection and Resale under the	)
Telecommunications Act of 1996	)
____	)

RETURN TO PETITION OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC FOR ARBITRATION WITH FARMERS TELEPHONE COOPERATIVE, INC., HARGRAY TELEPHONE COMPANY, HOME TELEPHONE CO., INC., AND PBT TELECOM, INC., UNDER THE TELECOMMUNICATIONS ACT OF 1996

Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Company, Inc., and PBT Telecom, Inc. (the "RLECs") respectfully submit this Return to the Petition for Arbitration filed by MCImetro Access Transmission Services, LLC ("MCI"). In its Petition, MCI sets forth twenty-one (21) unresolved issues for arbitration. Many of the issues are related and can be grouped conceptually. (For example, Issues 7, 9, 11 and 12 relate to the same topic.) Additionally, while the RLECs do not agree with MCI's characterization or framing of the issue in all cases, to avoid confusion and for the convenience of the Commission we will use MCI's statement of the issue but will attempt to explain the true basis for the dispute in the discussion of the RLECs' position on the issue.

In presenting the disputed language throughout this document, language proposed by the RLECs is shown in **Bold** and language proposed by MCI is shown in ***Underlined and Italic*** print.

The companies are being represented in this proceeding by the McNair Law Firm and JSI (telecommunications consultants). Copies of all pleadings in this matter should be provided to the following:

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UNRESOLVED ISSUES

A. GENERAL TERMS AND CONDITIONS

ISSUE #1

Issue: Should the Agreement state that it is pursuant only to §§ 251 (a) and (b) and 252 of the Act? (GT&C 3rd "whereas clause," Section 1.0, Interconnection Attachment Section 1.1)

RLEC position: Yes. The specific references are intended to clarify that this interconnection agreement is entered into between the parties pursuant to obligations of the RLECs under Sections 251 (a) and (b) and 252. The obligations under Section 251 (c) do not apply to all local exchange carriers, as Section 251(f)(1)(A) specifically exempts rural telephone companies until certain conditions have been met. MCI has repeatedly stated that it is requesting services from the RLECs pursuant to Sections 251(a) and (b) only, and that it is not requesting anything from the RLECs under Section 251(c). The RLECs would merely like this to be made clear in the Agreement. Having the disputed language in a "whereas clause" and in the introduction paragraph of the Interconnection Attachment does not mean that that the remaining sections of the Act do not apply to this interconnection agreement.

Disputed Language: GT&C - WHEREAS, the Parties wish to interconnect their facilities and exchange traffic specifically for the purposes of fulfilling their obligations pursuant to **Sections 251 (a) and (b), and 252 of** the Telecommunications Act of 1996 ("the Act"). *RLEC asserts that it is exempt from the provisions of section 251(c) of the Act, and CLEC has not requested anything from RLEC pursuant to section 251(c). By entering into this Agreement, RLEC does not waive its right to assert that it is exempt from section 251(c), and CLEC does not waive its right to assert that 1) RLEC is not exempt from section 251(c), or 2) that if RLEC is exempt, its exemption should be terminated.*

GT&C - 1. PURPOSE. The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform with each Parties' obligations under **Sections 251 (a) & (b), and 252 of** the Act.

Interconnection Attachment, 1.1 This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to **Sections 251 (a) and (b) of** the Act.

Discussion: By specifically referencing Sections 251(a) and (b) and 252 in these sections of the agreement, the RLECs are not attempting to avoid any of their obligations under the Act. This language is intended to clarify the obligations of the RLECs under this specific interconnection agreement with MCI. MCI has stated from the beginning that it is not requesting interconnection pursuant to Section 251 (c) of the Act. The RLECs' proposed language is necessary to make this clear. Clarifying the scope of MCI's interconnection request does not mean that the remaining sections of the Act do not apply to the RLECs. MCI's proposed language was only provided to the RLECs a couple of days before it filed this arbitration. However, the RLECs do not believe this language is necessary. The Commission should adopt the RLECs' proposed language.

ISSUE #2

Issue: How much time should the party receiving a default for non-payment have to cure the problem and how should it be notified? (GT& C Sections 3.1.3, 26)

RLEC position: The RLECs believe 10 days written notice should provide adequate time to respond to a written notice for a bill that is already 30 days past due.

Disputed Language: Notwithstanding the above, RLEC may terminate this Agreement if CLEC is more than 30 days past due on any undisputed payment obligation under this Agreement; provided that RLEC notifies CLEC of such default and CLEC does not cure the default within *thirty (30) days* **ten (10) days of receipt of written notice thereof.** *of receipt an emailed notice to person designated in contract to receive billing default notices with a copv of the bill attached or the time a copy of the bill would be separately faxed.*

Billing Notices for nonpayment should be *emailed along with copv of bill at issue (either emailed or faxed at same time as email)* **sent** to:
Earl Hurter
Sr. Manager - Line Cost Management
312-260-3599
Fax: 312-470-5611
email:earl.hurter@mci.com

Discussion: MCI should pay their bills on time. A 30 day period has already been allowed for payment of the invoices under the agreement. Extending the period another 30 days only encourages further delay in payment. An additional ten days after written notice should be adequate for MCI to pay or dispute the bill.

ISSUE #3

Issue: Should companies be required to provide JIP information? (GT& C Section 9.5)

RLEC Position: RLECs should have the ability to determine the proper jurisdiction of the calls delivered to our switches. Jurisdiction Information Parameter (JIP) is one of the pieces of information that is available and technically feasible which support the RLECs ability to establish the proper jurisdiction of calls terminating to their networks.

Disputed Language: The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including **the JIP and** originating signaling information. The Parties shall each use commercially reasonable efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

Discussion: The jurisdiction of the call determines the appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. For all intraLATA calls exchanged between the RLECs and MCI, the RLECs have proposed no per minute of use (MOU) charges (i.e., bill and keep compensation). Intrastate interLATA toll calls are compensated at the appropriate South Carolina intrastate switched access rates which are approximately $0.01 per MOU. If the call is an Interstate toll call, the appropriate interstate switched access charges apply and these rates range from $0.015 to $0.025 per MOU. RLECs have discovered that some traffic that is intra or interstate toll is entering their network disguised as local traffic in order for carriers to avoid the payment of access charges. Based on investigation by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified by several methods:

One method for misrepresenting the traffic is to substitute a local calling party number ("CPN") for the actual CPN of the call. Because carriers have the ability to substitute CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call.

Toll calls are also incorrectly identified by CPN when telephone numbers are assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a virtual NXX (VNXX), telephone numbers are obtained in one rate center and assigned to customers in another rate center or even another state. When a South Carolina telephone 803-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 803-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll.

The jurisdiction information parameter (JIP) is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 803-666-2222 but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. The RLECs use both the CPN and the JIP to determine the jurisdiction of the call. MCI argued that JIP would not give the proper jurisdictional information because its switch serves a larger area than a typical RLEC switch. This is not the case. If supplied, the JIP would still identify the call from San Francisco as an interstate call.

The JIP still helps identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At minimum, the JIP helps identify calls that are originated outside the regional switch. Therefore the call originated in San Francisco would be identified as a toll call. In the reverse, a call with a San Francisco telephone number that is located in Columbia, SC would be identified as a local Columbia call by the local JIP that would be populated by the MCI switch.

JIP was addressed in the Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF")[1] over the last several years. In December of 2004, open issues in the OBF went to final closure to become standard. The result is that there are seven rules for populating JIP. Although JIP was not made a mandatory field, its use is strongly recommended. Two of the seven rules address the issue of inclusion of JIP:

> Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.
>
> Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The OBF rules also address the MCI use of a switch that serves a regional area:

> Rule 4. Where technically feasible if the origination switch or mobile switching center ("MSC") serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.
>
> If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

[1] ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

All major switch vendors support JIP in their switches. At minimum the JIP parameter is included with the LNP software if it was not already part of the switch. Since LNP is a requirement for both MCI and the RLECs, JIP is technically feasible and should be required. The Commission should adopt the RLECs' language on this issue that requires both JIP and CPN.

ISSUE #4

Issue: Should parties be required to keep providing service to one another during dispute resolution over payment for service? (GT&C Section 13.3.1)

RLEC position: The RLECs need the ability to cut off service while a billing dispute is pending. Billing disputes are sometimes asserted without good cause and can be ongoing over a lengthy period of time during which the disputed amount can grow quite large. The RLECs can agree not to cut off service for a billing dispute if MCI pays the disputed amounts into escrow pending resolution.

Disputed Language: Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure **(other than a dispute related to payment for service)**, and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

Discussion: The RLECs need the ability to cut off service during the pendency of a billing dispute. Billing disputes have been known to be asserted without good cause or for improper purposes. In addition, dispute resolution may take a long time, sometimes years, and the dispute may be of an ongoing nature where the disputed amount grows quite large over time. This, combined with the recent increase in bankruptcy activity in the telecommunications industry, gives the RLECs real cause for concern. If the RLECs have accrued a large outstanding amount owed and a carrier enters bankruptcy, the RLECs' customers get stuck with the bill. RLECs cannot be held hostage in such a situation merely because the interconnecting carrier has, reasonably or not, disputed a bill. It is one-sided and unfair to expect that the RLEC should be the sole bearer of the risk associated with the accrual of unpaid amounts. Allowing MCI not to pay disputed amounts while continuing to receive service from the RLEC assumes that MCI will always be successful in a dispute, or if they are not, that they will be willing and able to pay the appropriate amounts owed when the dispute is resolved. The RLECs' only real protection when dealing with carriers who may become financially strapped or declare bankruptcy lies in their ability to terminate service and mitigate the additional accrual of amounts owed. The RLECs believe they should have the right to cut off service during the pendency of a billing dispute. The RLECs cannot agree to continue services unconditionally when there is a lengthy and potentially large ongoing dispute. However, they can agree not to cut off service for a billing dispute if MCI pays the disputed amounts into escrow pending resolution. That way, everyone's financial interests are protected.

ISSUE #5

Issue: Should the parties' liability to each other be limited, and should they indemnify each other for certain claims? (GT&C Sections 22.2-22.4)

RLEC position: Yes. The RLECs have built and maintained the facilities at issue and are required by law to allow MCI to use such facilities. However, the RLECs should not by any stretch of the imagination be required to incur liability (particularly when the amount of the liability is unknown and potentially large) to MCI or to third parties as a result of MCI's use of the facilities.

Disputed Language: All of sections 22.2-22.4

Discussion: The unresolved issues between the parties in this area relate to indemnification and to limitation of liability. First, as to indemnification, MCI has refused to indemnify the RLECs for claims related to use of the RLECs' facilities by MCI's end users. MCI is correct in stating that it cannot control the actions of its customers, but by the same token neither can the RLEC. The real question is, as between MCI and the RLEC, who should properly bear the expense and responsibility of defending claims related to MCI's customers' actions? MCI should bear that responsibility and should, therefore, indemnify the RLEC from such claims.

Second, as to limitation of liability, the RLECs believe that the Agreement should not allow the recovery of extraordinary amounts but that the parties should be limited to direct damages in any claims against one another. This is reasonable and common in commercial agreements. Consequential and punitive damages, by their very nature, can be completely out of proportion to the actual and direct damages sustained as a result of a breach of contract. The RLECs are not trying to avoid paying compensatory damages in the event of a breach or wrongful conduct, as MCI asserts. They are merely trying to limit the damages to just that – compensatory or direct damages.

ISSUE #6

Issue: Should *End User Customer* be defined as only customers directly served by the Parties to the contract? (GT&C, Glossary Section 2.19)

RLEC position: This agreement is limited in scope to the intraLATA traffic exchanged between customers of one party and the customers of the other party. Other carriers that provide local exchange services to customers and wish to exchange traffic with the RLECs must establish their own interconnection or traffic exchange agreements with the RLECs.

Disputed Language: A retail business or residential end-user subscriber to Telephone Exchange Service provided directly ***or indirectly*** by either of the Parties.

Discussion: An interconnection agreement is between two parties who are offering local exchange service in the same area. Neither third parties nor their traffic are part of an interconnection agreement between the RLECs and MCI. [2]

MCI argues that if it were restricted to exchanging only traffic originated or terminated by its own end users, it would be prohibited from offering wholesale service. The RLECs do not agree with this assessment. MCI can offer any wholesale offering it chooses; however, only those wholesale offerings where MCI controls the traffic will be included in this agreement. If a third party (and not MCI) controls the traffic, then that third party must enter into its own agreements with the RLECs.

MCI can use this agreement to provide resale service to a third party carrier which in turn bills the end users. In a resale situation, the facilities-based carrier (e.g., MCI) provides the facilities and controls the traffic generated by those facilities, and the reseller acts as the billing party. The facilities-based provider provides the same service to the reseller's end user customers that it would provide to its own end user customers from a facilities perspective, but the reseller is billed for the service.

This agreement cannot incorporate the situation where a third non-party company has control of the service and traffic offered to the end user customer. A third party can

[2] Transit traffic is local traffic that is routed through one party's tandem and is originated or terminated to the other party. The other party to the call is a third party to this agreement. Transit traffic is addressed in this agreement only from the perspective that transit service is provided to the two parties to this agreement. It does not address any obligations or reciprocal compensation impacting the third party.

control the local exchange service without building its own facilities by subcontracting with network providers for switching, loops, features, transport, and customer service. In this situation, the third party needs to contract directly with the RLEC to exchange service. An example of an arrangement where a company contracts for all the various network components is a CLEC who utilizes an unbundled network element platform (UNE-P). In UNE-P, the CLEC is responsible for all the traffic generated from its end user customers that terminates to other carriers. The UNE-P provider is also responsible for establishing contracts with the other carriers.

These two examples demonstrate that MCI is not restricted from providing wholesale service. However, only those wholesale offerings where MCI controls the traffic are properly included in this agreement.

MCI believes that section 251(a) of the act supports the notion that end user customers can be indirectly connected. This is not an accurate conclusion. 47 U.S.C. § 251(a) requires that:

> Each telecommunications carriers has the duty---
>
> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

This section of the Act discusses direct and indirect connection between <u>carriers</u>, and is referring to the physical interconnection of facilities and equipment. There is nothing in this statement to support the notion that <u>end user customers</u> can be indirectly connected to carriers. MCI's interpretation of this section is incorrect.

As stated above, a carrier that subcontracts network components may be "indirectly" connected to a third party carrier's network. However, the traffic generated by the third party is excluded from the reciprocal compensation and transport provisions of this agreement. The third party carrier must make its own arrangements for the traffic generated on the network it controls.

Interconnection arrangements are not vehicles for one Party to act as an aggregator. If interconnection agreements were not limited to carriers serving their own customers, one CLEC could obtain an interconnection agreement and terminate traffic for all other CLECs, CMRS providers and IXCs. In general, it is expected that intraLATA traffic would roughly be in balance between two connecting carriers. If a CLEC aggregates traffic, however, the traffic between the two parties would never be in balance.

The Commission should approve the RLECs' original language without the MCI changes.

ISSUE #7

Issue: Does the contract need a definition of *Internet Protocol Connection*? (GT&C Glossary Section 2.26)

RLEC position: Yes. This term is used in several different sections of the agreement. By clearly defining the term Internet Protocol Connection, it makes the use and meaning of this term in the agreement clear and unambiguous. MCI argues that this term is not needed because it is only used in sections of the agreement which it believes are also not necessary. See also Issues 9, 11, and 12.

Disputed Language: GT&C Glossary, **2.26 - INTERNET PROTOCOL CONNECTION (IPC). The IPC is the connection between the ISP and the customer where end user information is originated or terminated utilizing internet protocol**.

Discussion: The RLECs assert that this definition is necessary in the context of this agreement. Although MCI argues that the definition proposed by the RLECs is not needed because the telecommunications services MCI plans to provide will use the public switched network and MCI intends to pay either reciprocal compensation when the traffic is out of balance or access charges based on the physical location of the caller and called party, this does not mean that another CLEC that comes in after MCI will be doing the exact same thing as MCI. Under Section 252(i) of the Act and 47 C.F.R. §51.809, the RLECs are obligated to provide the same rates, terms and conditions to other CLECs. Just because MCI is saying that it is not proposing any different treatment between VoIP traffic than PSTN traffic, this does not mean that other CLECs will do the same. Therefore, the agreement needs to be clear and unambiguous in its meaning, and the term for IPC should remain in the agreement. The Commission should adopt the RLECs' proposed language and keep the IPC as a defined term in the agreement.

ISSUE #8

Issue: Is ISP traffic in the Commission's or FCC's jurisdiction in terms of determining compensation when FX or virtual NXX service is subscribed to by the ISP? (GT&C Glossary Sections 2.25, 2.28, and 2.34)

RLEC Position: The issue in dispute between the RLECs and MCI is not whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC, as MCI suggests. The issue is what constitutes ISP-bound traffic, especially when the CLEC assigns a virtual NXX as a dial-up ISP number and the ISP is not physically located in the RLEC's local calling area. Under the RLEC's proposed language all types of interexchange calls, including dial-up ISP calls using a virtual NXX, are consistent with the Commission's and the FCC's existing rules which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

RLEC Proposed Language:

2.25 INTRALATA TRAFFIC. Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.

2.28 ISP-BOUND TRAFFIC. ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.

2.34 LOCAL/EAS TRAFFIC. Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in RLEC's tariff.

MCI Proposed Language:

2.25 INTRALATA TRAFFIC. Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS. *ISP bound traffic will be rated based on the originating and terminating NPA-NXX.*

2.28 ISP-BOUND TRAFFIC. ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) *that may be physically located in the Local/EAS area of the originating End User Customer or has purchased FX service from the CLEC. The FCC has jurisdiction over ISP traffic and sets the rules for compensation for such traffic*.

2.34 LOCAL/EAS TRAFFIC. Any call that originates from an End User Customer physically located in one

> exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in RLEC's tariff. *ISP-bound traffic may be carried on local interconnection trunks but will be rated based on the originating and terminating NPA/NXX.*

Discussion: The Commission's and the FCC's current intercarrier compensation rules for wireline calls clearly exclude interexchange calls from both reciprocal compensation and ISP intercarrier compensation. This is also the case for virtual NXX calls since they are no different from 1-800 calls and standard dialed long distance toll calls. All of these types of calls are interexchange calls and "exchange access" that are exempt from existing reciprocal compensation rules. A "Virtual NXX" is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned.

MCI cites both the *Adelphia Arbitration Order*[3] and the *US LEC Arbitration Order*[4] from the Commission that dealt with virtual NXX, and attempts to argue that these orders "should no longer be controlling, at least with regard to ISP-bound traffic." (MCI Petition, p. 18) The RLECs strongly disagree because as demonstrated in our discussion of this issue, virtual NXX for dial-up calls to ISPs is not "ISP-bound Traffic" but rather interexchange traffic that is subject to the appropriate access charges.

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[3] *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996,* Docket No. 200-516-C, Order on Arbitration ("*Adelphia Arbitration Order*"), January 16, 2001.

[4] *Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996,* Docket No. 2002-181-C, Order No. 2002-619, ("*US LEC Arbitration Order*"), (August 30, 2002).

The ISP intercarrier compensation regime established in the FCC's ***ISP Remand Order***[5] does not apply to virtual NXX or other interexchange calls delivered to ISPs, as MCI and other CLECs would contend. The D.C. Circuit Court had no difficulty recognizing that the "interim [compensation] provisions devised by the [FCC]" apply only to "calls made to [ISPs] located within the caller's local calling area."[6] In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit's understanding of the scope of the intercarrier compensation obligation established in the ***ISP Remand Order*** is correct. The question before the FCC with respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Indeed, the CLECs' long-standing argument that a call to an ISP is just like a call to a pizza parlor would be nonsensical if they were referring to a pizza parlor located across the state from the calling party, rather than to one physically located in the same local calling area as the calling party. Thus, in the ***ISP Declaratory Ruling***[7] (¶¶ 12-15), the FCC rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's local server" and "ends at the ISP's local premises." And, in the ***ISP Remand Order*** (¶¶ 10, 13), the FCC recognized that it was addressing the compensation due for

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[5] Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").
[6] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Circuit 2002)
[7] Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*").

“the delivery of calls from one LEC’s end-user customer to an ISP in the same local calling area that is served by a competing LEC.”

MCI also states that it is discriminatory to allow RLECs to rate their FX and virtual NXX traffic as local when CLECs are not allowed to do the same, but it will not litigate this issue, as concerns the RLECs, for non-ISP traffic in light of the Commission's previous decisions. MCI then states that it reserves the right to have its FX and virtual NXX services rated as local if the FCC preempts the subset of states that have inconsistent rulings on the rating of CLEC FX or virtual NXX services.

The treatment of all such calls — under the Commission’s rules, the FCC’s rules, and the RLECs’ practice— is consistent and not discriminatory. In all cases, reciprocal compensation and ISP intercarrier compensation do not apply to interexchange calls. The RLECs use telephone numbers to determine whether calls are interexchange, but use those numbers only as a proxy for the location of the parties to a call, and where they represent the best information the RLECs have as to those locations or where inaccuracies affect a sufficiently small proportion of the traffic exchanged that the development of more accurate geographic billing factors (or use of more accurate location information) is unwarranted. Thus, because MCI calls to the RLECs’ traditional FX customers (where the telephone number is not an accurate proxy for the RLEC customer’s location) make up less than 1 percent of all CLEC calls to RLEC customers, the RLECs have not developed billing factors to account for such calls. On the contrary, Virtual NXX calls account for 50 percent or more of the traffic CLECs receive from the RLECs. Bottom line, the RLECs and MCI could develop factors to determine the amount of calling from MCI to the RLECs FX customers, but since the amount of traffic is so low it is not warranted.

ISSUE #9

Issue: Should the contract define *VoIP* and provide for special treatment of VoIP traffic? (GT&C Glossary 2.52)

RLEC position: Yes. The interconnection agreement should define the term "VoIP." With all of the regulatory uncertainties surrounding how VoIP will be regulated, it is necessary to make it clear how VoIP is defined and how VoIP will be treated in the context of this agreement The RLECs do not agree with how MCI has worded the second part of this issue. The RLECs are not asking for "special treatment of VoIP traffic." The RLECs are attempting to make sure that both parties to this agreement are clear on how VoIP will be defined, how VoIP traffic will be exchanged between the parties, and how the parties will compensation each other for VoIP traffic. <u>See also</u> Issues 7, 11, and 12.

Disputed Language: GT&C Glossary, **2.52 – VOIP OR IP-ENABLED TRAFFIC. VoIP means any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:**

(i) Voice traffic originating on Internet Protocol Connection(IPC), and which terminates on the Public Switched Telephone Network (PSTN); and

(ii) Voice traffic originated on PSTN, and which terminates on IPC; and

Discussion: First, the RLECs would like to clarify the disputed language. In MCI's arbitration petition, MCI listed the definition of VoIP above as disputed language and stated that it is not needed in the agreement. The RLECs would like to point out that the definition listed by MCI is not the final definition that resulted from negotiations. During negotiations, the RLECs had proposed to remove the third subpart of the definition of VoIP because the FCC had already determined that this type of VoIP is subject to its current intercarrier access charge regime. MCI had initially agreed to that change, but continued to argue that no definition for VoIP was needed.

The RLECs adopt, in full, the discussion of Issues 7, 11, and 12 in response to this issue and, for the same reasons discussed previously, the Commission should adopt the RLECs' proposed language and have VoIP as a defined term in the agreement.

B. INTERCONNECTION

ISSUE #10

Issue: Should MCI have to provide service (a) only directly to end users and (b) only to End Users physically located in the same LATA to be covered by this agreement? (Interconnection Attachment Section 1.1)

RLEC position: There are two issues in this section. (a) The traffic governed by this agreement is for telecommunications service provided by either Party to end user customers; and (b) the physical location of the originating and terminating customer determines the jurisdiction of the call.

Disputed Language: This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between RLEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, **where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA**. This Agreement also addresses Transit Traffic as described in Section 2.2 below. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to Sections 251 (a) and (b) of the Act.

Discussion: Issue (a) is the same issue as Issue 6. There are two parties to this agreement and traffic generated by third parties is not part of this agreement. The third party must have its own agreement to meet its 251(b) obligations. For the same reasons stated in regard to Issue 6, the RLEC language should be adopted.

Issue (b) deals with the ability of the parties to identify the proper jurisdiction of the calls. Both the FCC and the Commission have determined that the call jurisdiction is based on the physical location of the end user customers. The FCC has determined that the end-user customers involved in a telecommunications transmission must be physically located within the "local area" in order for the FCC to conclude that such traffic is "local." See Order *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996) at ¶ 1043.

This Commission has also ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*, the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*, the Commission held that:

> This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated." The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates. In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call."

MCI somehow argues that if you limit the scope of the interconnection agreement to address only local exchange traffic between the two parties, this prevents MCI from offering service. "This would prevent local exchange service from being provided to those customers." MCI Petition at p. 29. MCI is free to offer service in any LATA they wish, but the traffic terminated will be in accordance with the interconnection agreement for IntraLATA traffic and in accordance with access tariffs for InterLATA traffic.

The Commission should continue to uphold its previous positions that the physical location of the customer is the criteria for determining the jurisdiction of the call and adopt the RLEC language as proposed without modification.

ISSUE #11

Issue: Should references to VoIP traffic be included in the contract? (Interconnection Attachment Section 1.2)

RLEC position: Yes. All references to VoIP as well as the definition of VoIP should be included in the agreement. <u>See also</u> Issues 7, 9, and 12.

Disputed Language: Interconnection Attachment Section 1.2 – RLEC has no obligation to establish interconnection service arrangements to enable CLEC to solely provide Information Services. CLEC agrees that it is requesting and will use this arrangement for purposes of providing mainly Telecommunications Services and that any provision of Information Service by CLEC **(including VoIP Services)** will be incidental to CLEC's provision of Telecommunications Services. **The classification of certain forms of VoIP (as defined in this Agreement) as either Telecommunications Service or Information Service has yet to be determined by the FCC. Accordingly, RLEC has no obligation to establish an interconnection service arrangement for CLEC that primarily is for the provision of VoIP.**

Discussion: The RLECs adopt, in full, the discussion of Issues 7, 9, and 12, in response to this issue, and, for the same reasons discussed previously, the Commission should adopt the RLEC's proposed language.

Moreover, the RLECs assert that due to the regulatory uncertainty of how the FCC may classify VoIP as either an information service or a telecommunication service, the specific language proposed by the RLECs is that much more important. In addition, MCI may state that it is not asking to treat VoIP any differently than traditional voice traffic under this agreement; however, the RLECs have no guarantee from other CLECs that may opt into this Agreement. As stated above under the discussion of Issue 7, the RLECs are obligated to provide the same agreement to other CLECs who may have very different business plans than MCI.

ISSUE #12

Issue: Should there be language treating VoIP differently than other non-ISP-bound traffic? (Interconnection Attachment Section 1.6)

RLEC position: Yes. Because of the unique nature of VoIP traffic and because of the pending issues at the FCC regarding the appropriate regulatory classification and intercarrier compensation for VoIP, the environment is ripe for arbitrage. See also Issues 7, 9, and 11.

Disputed Language: Interconnection Attachment, **1.6 Jurisdiction of VoIP Traffic, as defined in this Agreement, is determined by the physical location of the End User Customer originating VoIP Traffic, which is the geographical location of the actual Internet Protocol Connection (IPC), not the location where the call enters the Public Switched Telephone Network (PSTN). In addition, the FCC has ruled that phone-to-phone calls that only utilize IP as transport are Telecommunication Services. Jurisdiction of such calls shall be based on the physical location of the calling and called End User Customer.**

Signaling information associated with IP-Enabled Voice Traffic must comply with Sections 3.5 and 3.6 of this Interconnection Attachment.

Discussion: The RLECs adopt, in full, the discussion of Issues 7, 9, and 11, in response to this Issue and, for the same reasons discussed previously, the Commission should adopt the RLEC's proposed language.

ISSUE #13

Issue: Should all IntraLATA Traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance? (Interconnection Attachment Section 2.4)

RLEC Position: Compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party with no per minute of use billing related to the exchange of such IntraLATA Traffic. From the beginning of negotiations, the RLECs proposed that there be no per minute of use billing for the exchange of IntraLATA Traffic under the agreement. Because MCI is a CLEC and can change business plans at any time in order to serve a certain sub-set of end users customers, it can use regulatory arbitrage to its financial advantage. RLECs do not have this flexibility to choose certain customers, because they are carriers of last resort and have an obligation to provide basic local exchange service to all end user customers within their respective certificated service areas.

Disputed Language: Interconnection Attachment, 2.4 The Parties agree to only route IntraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instruction and is not a provision of this Agreement. Both Parties agree that compensation for intraLATA Traffic shall be in the form of the mutual exchange of services provided by the other Party with no additional billing *if the traffic exchange is in balance. Traffic is considered out-of-balance when one Party terminates more than 60 percent of total Local/EAS traffic exchanged between the Parties. The Parties also agree that the compensation for ISP-bound traffic when out of balance is governed by the FCC's orders on compensation for ISP-*

bound traffic, specifically (1) the so-call ISP Remand Order [Intercarrier compensation for ISP-based Traffic, Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001)l and (2) the modifications to that order made in the FCC's decision on Core Communications' forbearance request (Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. Paragraph 161 (c) from Application of the ISP Remand Order, WC Docket No. 03-171, released October 18, 2004). Traffic studies may be requested by either party to determine whether traffic is out of balance. Such traffic studies will not be performed more than four times annually. Should a traffic study indicate that Local/EAS/ISP-bound traffic exchanged is out-of-balance, either Party may notify the other Party that mutual compensation between the Parties will commence in the following month. The Parties agree that charges for termination of Local/EAS and ISP-bound Traffic on each Party's respective networks are as set forth in the Pricing Attachment. **related to exchange of such traffic issued by either Party except as otherwise provided in this Agreement.**

Discussion: The RLECs have proposed from the beginning that there should not be a per minute compensation rate for the exchange of IntraLATA Traffic. It is obvious from MCI's position in Issue 8 that it intends to provide dial-up service to ISPs and it argues that such dial-up traffic using virtual NXX is subject to reciprocal compensation. As stated above with regard to Issue 8, such virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation that is at issue here, is the remaining IntraLATA Traffic.

Moreover, MCI is a CLEC which can change its business plan at any time to serve a certain sub-set of end users. This gives MCI the ability to use regulatory arbitrage to its financial advantage. MCI can target a type of customer like an ISP, and thereby generate out-of-balance traffic. RLECs do not have the flexibility to choose certain types of customers, as the RLECs must serve any end user customer within their respective service areas who requests service.

It is for these reasons that the Commission should adopt the RLECs' proposed language regarding compensation for IntraLATA Traffic.

ISSUE #14

Issue: Should Parties be required to provide (a) CPN and JIP; and (b) pay access charges on all unidentified traffic? (Interconnection Attachment Section 2.7.7)

RLEC position: Yes. In order to properly identify the jurisdiction of the traffic exchanged between the parties, the parties should be required to provide CPN and JIP. The parties should have an incentive to properly identify the jurisdiction of the traffic exchanged between them.

Disputed Language: If either Party fails to provide accurate CPN (valid originating information) <u>*or*</u> **and** Jurisdiction Information Parameter ("JIP") on at least ninety percent (90%) of its total originating INTRALATA Traffic, then traffic sent to the other Party without CPN or JIP (valid originating information) will be handled in the following manner. <u>*All unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic.*</u> **The remaining 10 percent (10%) of unidentified traffic will be treated as having the same jurisdictional ratio as the ninety (90%) of identified traffic. If the unidentified traffic exceeds ten percent (10%) of the total traffic, all the unidentified traffic shall be billed at a rate equal to RLEC's applicable access charges. The originating Party will provide to the other Party, upon request, information to demonstrate that Party's portion of traffic without CPN or JIP traffic does not exceed ten percent (10%) of the total traffic delivered.** The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure and to assist its correction.

Discussion: As stated in Issue 3, some carriers are misrepresenting traffic as local to avoid paying access charges. The RLECs believe that if the incentive for misrepresenting traffic is eliminated then carriers are more likely to comply and provide accurate information.

The RLECs have proposed a 90% compliance rate for complying with the CPN and JIP. As stated in Issue 3, OBF strongly recommends that JIP be included in the signaling information. The scope of this agreement is limited to IntraLATA traffic that is exchanged between MCI and the RLECs. Since the traffic is IntraLATA, all the traffic should be originating on the local/regional switch. MCI controls 100% of this traffic. Thus, 100% of the traffic should have these parameters. However, the RLECs have built in a 10% grace factor. Beyond 10%, MCI needs to take responsibility for the traffic on its network. If MCI or its customers are misrepresenting traffic, the RLECs do not believe they should get an automatic discount on access traffic. Further, the proposed language is reciprocal and therefore, the RLECs are not asking MCI to do anything the RLECs themselves are not willing to do.

The Commission should adopt the original RLEC language without MCI's modifications.

ISSUE #15

Issue: Does the contract need the limit of "directly provided" when other provisions discuss transit traffic, and the issue of providing service directly to end users also is debated elsewhere? (Interconnection Attachment Section 3.1)

RLEC position: Yes. As discussed in Issues 6 and 10, third party traffic is not part of this agreement between the RLECs and MCI.

Disputed Language: Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, **and shall only carry IntraLATA traffic originated or terminated directly between each Parties End User Customers**. The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275

Discussion: This issue is essentially the same as Issue 6. Third parties are not part of this agreement and are obligated to directly contract the RLECs for the exchange of traffic with the RLECs even if they utilize other parties' networks to achieve the physical interconnection.

In the statement of this issue, MCI raises the issue of transit traffic. The only reason this agreement has language regarding transit traffic is because RLECs have tandems in their networks. When MCI originates local traffic that terminates to a CLEC, CMRS or RLEC that has an NPA-NXX with a homing arrangement of the RLEC tandem in the LERG, transit traffic is generated. If MCI originates such traffic, the agreement states that MCI will pay for the transit rate to the RLEC. The transit traffic language does not place any obligations on the third party carriers. In addition, the language specifically states that payment of reciprocal compensation on such traffic is not part of this agreement but instead must be negotiated between MCI and the third party. This handling of transit traffic is consistent with the RLEC position that the carriers may have indirect "physical" interconnection facilities but must also have direct contractual arrangements.

The Commission should adopt the original RLEC language without MCI's modifications.

ISSUE #16

Issue: Should Parties have to provide the specified signaling parameters on all calls? (Interconnection Attachment Section 3.6)

RLEC position: All signaling parameters are to be included in the signaling information whatever the source.

Disputed Language: Signaling Parameters: RLEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling Party Number, **JIP** and destination called party number, etc.) pursuant 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be <u>*passed along as received*</u> **provided** including CPN, JIP, Originating Line, Calling party category, Charge Number, etc. All privacy indicators will be honored

Discussion: There are two issues included in the disputed language of this section. First is the proper identification of the call jurisdiction as discussed in Issues 3 and 14. Second is the statement by MCI that signaling parameters will only be "passed along as received." Signaling information is generated by the switch serving the customer. The end user customers connected to MCI would be MCI's end user customers it serves directly or resellers of MCI's Service. Since both these categories of customer utilize the MCI switch, MCI is in complete control of the signaling information generated. MCI is not a tandem provider in South Carolina; therefore, there should not be any carrier connecting to MCI to "pass along" signaling information. Therefore, the RLEC wording of this section should be adopted by the Commission.

C. NUMBER PORTABILITY

ISSUE #17

Issue: Should the Parties be providing service directly to End Users to port numbers? (Number Portability Attachment Section 1.1)

RLEC position: The current FCC rules require only service provider portability. The RLEC language proposed in the agreement is consistent with the RLEC obligations and the FCC's rules regarding number portability.

Disputed Language: The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service
Provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. **Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider to the End User Customer porting the telephone number.** The dial tone must be derived from a switching facility that denotes the switch is ready to receive dialed digits. **In order for a port request to be valid, the End User Customer must retain their original number and be served directly by the same type of Telecommunications Service subscribed to prior to the port.**

Discussion: The definition of service provider portability states:

> [S]ervice provider portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

47 C.F.R. § 52.21(q). Based on the FCC rules and numbering standards, Service Provider Portability is the only type of portability required. Third Report and Order, *Telephone Number Portability*, 13 F.C.C.R, 11701 (1998), at ¶ 3 ("In light of the statutory definition, Section 251(b)(2) requires service portability, but not location or service portability.") At some point in the future other types of portability may be required or different standards may be developed. However, there are not rules or standards today governing porting of numbers to non-telecommunications carriers.

The definition of service provider portability is specific that the port must be between two telecommunications providers. It is also specific in that it requires the end users to have telecommunications service before and after the port. The definition does not address porting to a customer who switches to a non-telecommunications service. It also does not address the occasion of porting between a telecommunications service provider and a non-telecommunications provider. There are no rules requiring these types of ports. There are also no standards in the Alliance for Telecommunications Industry Solutions ("ATIS") standards body to address how these ports would actually take place, the billing associated with the resulting calls, and how traffic would be exchanged.

Time Warner has stated in hearings before the Commission that it intends to utilize MCI to obtain telephone numbers and perform porting functions for Time Warner's VoIP customers. Time Warner has taken the position, however, that the VoIP service they provide to their customers is not a "telecommunications service." Although MCI is a telecommunications service provider, there is no telecommunications service being provided to the end user in the above-described situation. MCI may be providing a telecommunications service to Time Warner but not to the end user. Therefore, any proposed arrangement between MCI, Time Warner and the RLECs does not meet the definition of Service Provider Portability. The end user customer would be moving its telecommunications service from the RLEC to Time Warner, which will claim it is not providing a telecommunications service to the end user. Also, Time Warner would be the ultimate provider of service to the end user, and it does not want to be considered a telecommunications service provider. Thus, the two basic qualifications for Service Provider Portability are not met. The end user does not have telecommunications service after the port and the service provider is not a telecommunications service provider.

The FCC's CC Docket No. 99-200 referenced by MCI in its Arbitration Petition is not a generalized order applying to all VoIP providers. The order is a waiver for one VoIP provider to expand its trial and obtain numbers directly. No other providers can obtain numbers based on that order. The order also requested the North American Number Committee (NANC) to investigate if and how standards would change to accommodate a VoIP provider. Until there is a resolution on these issues, the RLECs have no obligation to deviate from the current rules and standards.

The RLECs are also not prohibiting MCI from offering resale service, as MCI asserts, and have specifically included resale in the proposed language. The inclusion of other types of wholesale service offered by MCI is the same issue raised in Issues 6 and 10(a) above.

The Commission should adopt the RLEC proposed language without modification.

D. PRE-ORDERING, ORDERING, PROVISIONING, MAINTENANCE

ISSUE #18

Issue: What should the interval be for providing CSRs? (Pre-Order and Ordering Attachment Section 1.3)

RLEC position: Depending on the volume of requests, one to five days is a reasonable time frame for the RLEC to produce the customer service record (CSR).

Disputed Language: Based on reasonable volume of requests, the standard interval for address verification is one to two business days and *less than 48 hours (unless a state sets a shorter interval) for CSRs for customer with 24 or less lines.* **one to five business days for a full customer service record.**

Discussion: The RLECs currently do not have customer service records (CSRs) in a format that is easily provided to MCI. The current format of the information also includes RLEC-specific information that would not be included on the CSR. The final CSR for pre-ordering purposes would have to be specifically created for MCI.

The RLECs have limited staff that would have the knowledge to produce the customized CSRs. This staff could be easily overwhelmed if a large volume of requests for CSRs were received. The RLECs believe an interval of one to five days is reasonable based on their lack of experience and knowledge on the volume of requests.

MCI references the timeframes under which large LECs process requests. The large LECs have been processing these types of requests for nine years. Over that time period they have fine tuned both their mechanized systems and the manual process. Clearly, even the large LECs did not have the same one or two day intervals in 1996. The RLECs have not had such experience. As experience does build their processes should also become more efficient.

The Commission should adopt the one to five day interval for the delivery of the CSR.

E. PRICING

ISSUE #19

Issue:	Are the proposed transport and transit rates reasonable? (Pricing Attachment A 1, 2, & 3)
RLEC Position:	Yes. The proposed ***transport*** rates are supported by the Act and by the FCC's proceedings governing the rating of transport. ***Transit*** rates are consistent with the market. The transit rates are reasonable based on the market.

Discussion: *(1) Transport.* The FCC established in the *Triennial Review Remand Order* (FCC Docket No. 04-290) that competitive LECs may obtain "outside" transport facilities under Section 251 of the Act and that such facilities will be available at cost-based rates.

The FCC's rules prescribe proxies for forward-looking economic costs for dedicated transmission links. Under the rules, those proxy-based rates can not be greater "*than the incumbent LEC's tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings*." 47 C.F.R. § 51.513(c)(3). This conclusion is also supported under the FCC's rules governing the establishment of rates for local exchange carriers' (LECs) transport and termination. Under those rules, the FCC requires LECs' transport rates to comply with the proxies prescribed for the "analogous unbundled network elements used in transporting a call." 47 C.F.R. § 51.707. The rates for transport proposed by the RLECs, therefore, are consistent with the LECs' rating obligations under the FCC's rules.

(2) Transit. The rates for transiting proposed by the RLECs are not within the scope of the rules prescribed by the FCC. Nevertheless, the RLECs' proposed rates for transit are comparable to other incumbent LECs in the state of South Carolina.

BellSouth Transit Rate –	Current	$0.003
	Proposed	$0.006

The commission should find that the RLEC proposed rates are reasonable.

ISSUE #20

Issue: Are the ordering charges just and reasonable? (Pricing Attachment C 1, 2 & 4)

RLEC position: The rates are just and reasonable.

RLECs' Language:

PBT:

Service Order (LSR)	**$ 23.00 / request**
Service Order Cancellation Charge	**$ 35.00 / request**
Order Change Charge	**$ 35.00 / request**

Hargray:

Service Order (LSR)	**$ 22.00 / request**
Service Order Cancellation Charge	**$ 35.00 / request**
Order Change Charge	**$ 35.00 / request**

Farmers:

Service Order (LSR)	**$ 28.00 / request**
Service Order Cancellation Charge	**$ 32.00 / request**
Order Change Charge	**$ 32.00 / request**

Home:

Service Order (LSR)	**$ 22.00 / request**
Service Order Cancellation Charge	**$ 35.00 / request**
Order Change Charge	**$ 35.00 / request**

Discussion: The proposed rates are just and reasonable. The RLEC rates are comparable with Bellsouth and Verizon rates listed below:

<u>BellSouth Rates:</u>

<u>MCI BellSouth Agreement</u>

Electronic	$ 10.62
Manual	$ 22.00

<u>Level 3 Communications/BellSouth Agreement</u>

Electronic	$ 3.50
Manual	$ 15.66

Order Modification:
Any cost incurred in accordance with FCC#1 Section 5

Order Cancellation:
Any cost incurred in accordance with FCC#1 Section 5.4

<u>Verizon:</u>

SO Charge	$16.00
Subsequent Servicing Order	$24.00

The RLECs do not have the economies of scale to spend millions of dollars to mechanize their order entry systems for their own operations. It would be even more difficult to mechanize the process solely for the purpose of moving customers off the RLECs' respective networks, and the RLECs should not be required to expend funds for these purposes. The RLECs may never implement mechanize ordering, not because they want to drive up the cost to a CLEC but because there is no cost benefit on the current subscriber base. The RLECs' customers should not have to pay the cost of satisfying MCI's request, which would benefit only MCI.

MCI comments that the rate should be consistent for all four RLECs. There is no basis for establishing the same rate for companies that are diverse in size and operating procedures.

The Commission should adopt the RLECs proposed rates.

ISSUE #21

Issue: What should the reciprocal compensation rate be for out-of-balance local/EAS or ISP-bound traffic? (Pricing Attachment D)

RLEC Position: As discussed in Issues 8 and 13, there is not a need for a reciprocal compensation rate. In fact, during the entire course of negotiations the Parties never discussed what would be the appropriate reciprocal compensation rate. All of the discussion surrounded if there should even be reciprocal compensation.

Disputed Language: Pricing Attachment, Section D ***$0.0007***

Discussion: As discussed in Issues 8 and 13, there is not a need for the Commission to set a reciprocal compensation rate. The first time that MCI proposed any reciprocal compensation rate was when it filed its Arbitration Petition. The parties have had no negotiations whatsoever with respect to the reciprocal compensation rate. Negotiation is required before an issue can be submitted for arbitration. This issue is, therefore, not properly before the Commission at this time. However, should the Commission determine to take up the issue, the RLECs reserve the right to submit testimony and arguments regarding the issue during the course of this proceeding.

Respectfully submitted,

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AND PBT TELECOM, INC.

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